**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**O.O.C.J.**

**SUMMONS FOR JUDGMENT NO. 607 OF 2004**

**IN**

**SUMMARY SUIT NO. 1516 OF 2004**

Prafulla R. Mehta .....Plffs.
vs.
Bharat P.Valia .....Defnds.

**A L O N G W I T H**

**SUMMONS FOR JUDGMENT NO. 594 OF 2004**
**IN**
**SUMMARY SUIT NO. 1544 OF 2004**

Dr. Mahendra Ratilal Mehta .....Plffs.
vs.
Bharat P.Valia .....Defnds.

K.K. Shroff i/b. Daru Shah and Co. for the plffs.

Ketan Parekh i/b. Shah and Sanghvi for the defnds.

**CORAM: S.U. KAMDAR, J.**

**DATE : 13th September, 2005.**

**P.C. :**.

1. The present suit is filed on a promissory note of Rs.3.00 lacs dated 31.12.1997. It is an admitted position that from time to time part payments were made towards interest and the last of the part payment is made on 20.2.2001 for a period upto 22.5.2001. The suit is filed on 20.5.2004.

2. It is contended by the learned cousnel for the defendant firstly that the fact that the interest is paid in advance indicates that the loan is not lent and advanced on a promissory note Merely because the interest is paid on demand promissory note in advance does not convert a transaction of loan lent and advanced under a negotiable instrument to an oral agreement of loan and therefore the said contention has no merits.

3. The second contention raised by the defendant is that the last payment is made on 20.2.2001 and period of three years must be computed from upto

20.2.2001 and not from 22.5.2001 and therefore the suit is beyond time. The said defence has also no merits in as much as the payment of interest on 20.2.2001 was for a period up to 22.5.2001 and thus the cause of action to demand the repayment of loan would arise only on 22.5.2001 and thus starting period of limitation is 22.5.2001 and not 20.2.2001. From the said date of 22.5.2001 the suit is in time because the suit is lodged in this court on 20.5.2004.

4. The last defence raised by the learned counsel for the defendant is that it is a money lending transaction and the plaintiff does not have licence for money lending. The present suit is filed on friendly loan and therefore the provision of Money Lenders Act are not attracted. In view thereof there is no merits in the said contention also.

5. However with a view to grant an opportunity to the defendant to defend the suit I direct the defendant to deposit a sum of Rs.4,50,000/- within

a period of four weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposit of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

6. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed within four weeks from the date of deposit Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

7. In Summons for Judgment no. 607 of 2004 an additional contention raised is that the promissory note is for Rs.1.00 lacs whereas in the particulars of claim, claim is made for Rs.80,000/-. Thus there is a discrepancy in claim which is required

to be considered at trial. It is not disputed that part payment is made. In that view of the matter there is no merit in the afoaresaid contention. However with a view to grant an opportunity to defend the suit, I direct the defendant to deposit Rs.1.00 lacs within a period of four weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposit of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

8. If the amount is paid as aforestated under Summons for judgment no. 607 of 2004, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

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